

**Testimony of Paul Kilcoyne**  
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**INTRODUCTION**

Chairman Whitfield, Ranking Member Stupak and distinguished Members of the Oversight and Investigations Subcommittee of the House Committee on Energy and Commerce. My name is Paul Kilcoyne and I am the Deputy Assistant Director for the Investigative Services Division at U.S. Immigration and Customs Enforcement (ICE). I would like to thank the Subcommittee for their interest in Internet Data Brokers. The Internet has a huge depository of information that can be used by law enforcement agencies at every level. However, care must be taken to ensure that the information is accurate and obtained by lawful means. We appreciate the Subcommittee's oversight and the opportunity to address this issue.

**BACKGROUND**

ICE representatives were contacted by Subcommittee staff in May 2006 and asked to provide a briefing on Internet data brokers. The Subcommittee staff provided some information from their oversight investigation concerning the ICE Denver field office's use of a company named Best411.com to obtain subscriber information on cellular telephones. The ICE Headquarters Office of Investigations queried the Denver field office about letters signed by ICE agents that requested subscriber information, and determined that 4 special agents had requested and received such information from Best411.com

The ICE Cyber Crimes Center (C3) then looked into the website and offered the opinion that while a law enforcement officer can use public Internet queries to obtain subscriber and other public information, the identifying information should be substantiated by the issuance of appropriate legal process to the company that retains the data in order to ensure the veracity of the evidence. Even if no charge is incurred, the use of private investigators to obtain subscriber information by Federal law enforcement agents could compromise sensitive investigations. The ICE Office of Investigations contacted the Denver field office to recommend that they not use Best411.com and to state that Headquarters was working on field guidance to further clarify the issue. Guidance for the field offices is currently being drafted. We are aware that the Government Accountability Office has issued a report on the use of commercial data recommending that the Department of Homeland Security establish a policy for such use and that the DHS Privacy Office is currently developing such a policy. ICE intends to work closely with the DHS Privacy Office on this matter.

ICE has long-standing robust guidelines in the Special Agent Handbook to govern obtaining telephone toll and subscriber information but which does not currently fully cover all Internet technology. We are working diligently to update our procedures to cover this unforeseen situation.

## **ISSUES AND RESPONSE**

During a June 5, 2006 meeting, the Subcommittee staff raised their concerns about law enforcement officers using internet data brokers to obtain subscriber information on cellular telephones and provided several letters signed by ICE employees requesting such information.

The ICE agents involved appear to have used these resellers to quickly filter out numbers that were not related to their investigations. The data resellers were able to respond to these requests for information within a few days, whereas cellular telephone companies typically take several weeks.

I would like to note that the ICE Office of Investigations has recommended that the SAC Denver office not use these resellers in the future. Furthermore, we are currently drafting guidance on this issue for the ICE field offices. As noted above, we intend to coordinate this guidance within the Department with the DHS Privacy Office.

Finally, in response to the Subcommittee's question of whether agents acted improperly in obtaining the information, the ICE Office of Professional Responsibility reviewed the facts and circumstance of this situation and determined that the employees did not act improperly.

Thank you for the opportunity to testify today and I look forward to the Subcommittee's questions.